clear that it is intended to "ensure replication" of a full-power station's service area and "permit maximization" of that service as provided for in the Commission's rules.[45]

DTV stations that wish to revert to their analog channel at the end of the transition period should be permitted to do so. They should not be required to file maximization applications on their analog channels by the May 1, 2000, deadline. Instead, the intent to maximize their existing DTV allotments also should be construed as an intent to maximize their DTV facility on their analog channel at the end of the transition period. DTV stations that wish to revert to operating on their existing analog channel at the end of the transition period should be required to file a maximization application within 30 days after the end of the transition, and should not be required to protect any Class A stations.

For those full-power stations whose DTV and NTSC channels are both outside the core (*i.e.*, above Channel 51), the statutory deadline for filing a notice of intent to maximize their DTV facility should apply, but these DTV stations should not be required to file a maximization application for their in-core channel (which is entitled to protection from Class A service) until 30 days after they have been allotted a DTV channel inside the core spectrum.

IV. The FCC Should Apply Strict Eligibility Requirements In Implementing the Statutory Eligibility Criteria Set Forth in the CBPA.

Section 336(f)(1)(C) of the Act (as amended by the CBPA) provides that a qualified LPTV station has 30 days after final regulations implementing the CBPA are adopted by the Commission in which to submit an application for a Class A license. Section 336(f)(2)(A) of the Act provides that Class A licenses are available only to those LPTV stations which met the qualifying criteria

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[45] *See* 47 U.S.C. §336(f)(1)(D).

contained therein on a continuous basis during the 90-day period preceding the enactment of the CBPA (*i.e.*, August 31, 1999, through November 29, 1999). Subsection (B) of the above provision states, however, that the Commission may, in its discretion, determine that the public interest would be served by treating an otherwise ineligible LPTV station as a "qualifying low-power television station for purposes of this section . . . ."[46]

A. One-Time Filing Period.

In the *NPRM*, the FCC acknowledged that the CBPA provides that licensees have 30 days after final regulations implementing the CBPA are adopted in which to file a Class A application.[47] According to the Commission, however, it is not clear whether qualified LPTV stations must apply for a Class A license within the time period prescribed by the CBPA, or whether the FCC may continue to accept applications from LPTV stations to convert to Class A status in the future. In the event the FCC has such authority, the Commission asked whether, "as a matter of policy," it should continue to permit LPTV stations to convert to Class A status after the time frame established by the Act expires.[48]

The FCC previously has recognized that there are practical limits on the number of LPTV stations that may become Class A stations, and that there simply is not sufficient spectrum available to grant primary status to all of the operating LPTV stations.[49] The Commission also has stated that it will be difficult, if not impossible, for all of the pending NTSC proponents to amend or modify

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[46] 47 U.S.C. §336(f)(2)(B).

[47] *NPRM*, ¶8.

[48] *Id.*, ¶9.

[49] *Initial Notice*, ¶46.

their existing proposals to eliminate interference conflicts due to the allotment of DTV channels and the reallocation of channels 60-69 to public safety and other uses.[50] If the Commission elects to adopt its tentative proposal and require pending NTSC proposals to protect Class A applications, permitting additional LPTV stations to convert to Class A status after the statutory filing period would make it that much more difficult for pending NTSC proponents to find a suitable replacement channel. Therefore, in implementing Section 336(f)(1)(C) of the Act, the Commission should permit LPTV stations to file an application to convert to Class A status only "within 30 days after final regulations are adopted" to implement the CBPA.[51] To the extent the Commission determines that Section 336(f)(2)(B) of the Act effects its ability to accept Class A applications filed outside the statutory time period, the Commission should accept requests to convert to Class A status under subsection (f)(2)(B) only under the most exceptional and compelling circumstances.[52]

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[50] *Id.*, ¶37.

[51] 47 U.S.C. §336(f)(1)(C).

[52] The express statutory restriction of limiting Class A eligibility only to those qualified LPTV stations which met the statutory eligibility criteria during the 90-day period prior to the enactment of the CBPA is consistent with the Community Broadcasters Association's ("CBA's") rulemaking petition which proposed that conversion to Class A status would be a one-time event. *See* CBA's Amendment to Petition for Rulemaking, filed March 18, 1998 ("Amended Petition"), Appendix A (modifying proposed rule Section 73.627(a) to require that Class A applications be filed within one year after the effective date of the new rules). The WB recognizes that the CBA's rulemaking proposal has been rendered moot, at least in large part, by the CBPA. Nevertheless, because the CBPA contains language which is substantially similar to that contained in the CBA's rulemaking petition, the Commission should consider certain aspects of the CBA's rulemaking proposal in promulgating rules to implement the CBPA and attempting to resolve matters which have not been specifically addressed in the new legislation.

B. Specific Eligibility Criteria.

In order to be a "qualifying" LPTV station, the CBPA requires, *inter alia*, that for the 90-day period preceding the enactment of the new legislation, the LPTV station broadcast (i) a minimum of 18 hours per day, and (ii) an average of at least three (3) hours per week of local programming.[53] As stated above, in the event the Commission elects to adopt its proposal to require pending NTSC proposals to protect Class A stations, including those which would promote the objectives of Section 307(b) of the Act by bringing the designated community its first local television service, the Commission must demand strict adherence to both the minimum operating and local programming requirements. For example, assuming a Class A station broadcasts only 18 hours per day, the statutory requirement of airing an average of 3 hours per week of local programming amounts to approximately only 2.4% of a Class A station's total broadcast time. If a Class A station were to broadcast 24 hours per day (168 hours per week), the local programming requirement would constitute only 1.8% of the station's total programming. Because Congress has required that a Class A station's local programming consist of less than 2% of its total available broadcast time, the FCC should demand strict adherence to the three-hour local programming requirement, and not waive that requirement under any set of circumstances. The Commission also should require that a Class A station's local programming be non-repetitive and noncommercial in nature. In addition, the

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[53] 47 U.S.C. §336(f)(2)(A). The CBPA describes local programming in the following manner:

> . . . programming that was produced within the market area served by such station, or the market area served by a group of commonly controlled low-power stations that carry common local programming produced within the market area served by such group . . . ."

47 U.S.C. §336(f)(2)(A)(i)(II).

Commission should not permit public service announcements to count towards the three-hour local programming requirement.

Moreover, because the CBPA is based on Congress' explicit findings that qualified LPTV stations have "provided [programming] to their communities that would not otherwise be available,"[54] and that it would serve "the public interest to promote diversity in television programming such as that currently provided by low-power television stations to foreign communities,"[55] the Commission should require Class A stations to continue to meet the local programming requirement after the filing of their Class A application and throughout each license period thereafter. Class A licensees also should be required to certify annually to their compliance with the local programming requirement.

C. "Market Area".

With respect to Congress' use of the term "market area" in Section 336(f)(2)(A)(i)(II) of the Act, for purposes of the local programming criterion, "market area" should be defined to include that area encompassed within the station's protected signal contour, as determined in accordance with Sections 74.707(a) (analog) and 73.622(e) (digital) of the Commission's rules. Thus, for a Class A Station operating on NTSC Channel 42, the "market area" would include that area within the station's 74 dBu contour, calculated using the Commission's F(50,50) signal propagation curves. For a Class A station operating on DTV Channel 13, the "market area" would include that area within the station's 36 dBu contour, calculated as a predicted F(50,50) field strength. With respect to determining whether the local programming criterion has been satisfied where a group of

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[54] Section 5008(b)(1) of Pub. L. No. 106-113, 113 Stat. 1501 (1999).

[55] *Id.* at §5008(b)(5).

commonly- controlled stations is involved, "market area" should be defined as the area encompassed by the protected signal contours of all of the commonly-controlled stations in the group.

V. Class A Stations Must Be Governed by Part 73 of the Commission's Rules.

In the CBA's Petition for Rulemaking, the proponent of the new legislation expressly requested that the FCC adopt rules to create a new Class A television service "under Part 73 of the Commission's Rules and Regulations."[56] The CBA further stated:

> These amendments provide for Class A television stations to be regulated under Part 73 rather than Part 74 of the Commission's Rules, and to be subject to all sections of Part 73 except those that clearly cannot apply because of the way in which channels have been assigned to LPTV in the past.

Id. at 2 (footnotes omitted).[57]

In the *NPRM*, the Commission proposed to apply all Part 73 rules to Class A stations, except those that are inconsistent with the manner in which LPTV stations are authorized to operate. Specifically, the Commission proposed to apply the Part 73 requirements concerning children's educational and informational programming, commercialization limits during children's programming, the political programming rules, and the public inspection file rule.[58] For the reasons stated below, the Commission's proposal should be adopted.

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[56] CBA's Petition for Rulemaking, filed September 30, 1997 ("CBA Petition"), p. 1.

[57] CBA noted that, with a few minor exceptions, the rules in Part 73 that should not apply to Class A stations include only the NTSC and DTV tables of allotments, mileage separations, and the minimum power and height requirements. *See* CBA Petition, p. 2, n.4.

[58] *NPRM*, ¶20.

A. Class A Stations Should Be Required to Provide Issue-Responsive Programming.

In the CBPA, Congress established a primary service, "Class A" license for qualifying LPTV stations based on their past service to the public. As stated above, Congress explicitly found that some LPTV stations have (i) operated their stations in a manner consistent with the public interest by providing programming to their respective communities that otherwise would not be available; (ii) "operated their stations in a manner consistent with the programming objectives and hours of operation of full-power broadcasters"; and (iii) served the public interest by promoting diversity in television programming by providing programming to "foreign-language communities."[59] Thus, consistent with the CBA's earlier rulemaking proposal, the Class A license is for "stations that originate programming and provide unique programming sources to their communities."[60]

As demonstrated above, by affording qualifying LPTV stations primary service status, Class A stations have the potential to preclude many new full-service NTSC stations that would serve significantly more viewers, including many that would bring a first local service to the designated community. The new full-service NTSC stations also would help promote the emergence of new networks by providing them with additional broadcast outlets with which to affiliate and thereby enhance their distribution. Therefore, because the Commission policy requiring full-service stations to air issue-responsive programming applies equally as well to Class A stations, as a condition to obtaining primary service status, Class A stations should be required to provide programming that is responsive to the needs and interests of their respective service areas.

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[59] *See* Sections 5008(b)(1), (2) and (5) of Pub. L. No. 106-113, 113 Stat. 1501 (1999).

[60] CBA Petition, p. 1.

B. Class A Stations Should Be Required to Comply With the Children's Programming Requirements.

As stated above, in enacting the CBPA, Congress expressly found that qualifying LPTV stations are airing programming that serves the public interest in their respective communities, and that such stations have operated consistent with the programming objectives of full-service stations.[61] These congressional findings necessarily imply that the programming provided by qualifying LPTV stations is being viewed by local residents, including children. There is no policy justification for not requiring Class A stations to be subject to the same children's programming requirements that apply to full-service licensees. Therefore, the Commission should require Class A stations to comply with the children's educational and informational requirements, as well as the commercial limits contained in Part 73 of the FCC's rules.

C. Class A Stations Should Be Required to Maintain a Public Inspection File and Main Studio.

In light of the congressional finding that the programming provided by qualified LPTV stations serves a legitimate public interest, there is no reason to believe that requiring Class A stations to comply with the FCC's public inspection file and main studio rules would serve any lesser public interest than requiring full-service broadcast stations to comply with those same rules. Indeed, if Class A stations are to be entitled to the same benefits as other "primary service" broadcast stations, they should be subject to the same non-technical regulatory requirements. Moreover, in the CBA's Petition for Rulemaking requesting the FCC to adopt a Class A television service, the CBA did not request that Class A stations be excused from the requirements of Sections 73.3526 and

[61] *See* Sections 5008(b)(1) and (2) of Pub. L. No. 106-113, 113 Stat. 1501 (1999).

73.1125 of the Commission's rules. Thus, there is no rational basis for exempting Class A stations from the requirements of maintaining a public inspection file and a main studio.

D. Class A Stations Should Be Required to Certify Annually to Their Continued Eligibility For a Class A License.

As stated above, Congress made the explicit findings that qualifying LPTV stations are airing programming that serves the public interest in their respective communities, and that such stations have operated consistent with the programming objectives of full-power licensees.[62] Therefore, to demonstrate their continued eligibility for a Class A license, Class A stations should be required to certify on an annual basis to their continued compliance with the local programming requirement, the minimum operating requirement, and all provisions of Part 73 of the Commission's rules which are applied to Class A licensees.[63]

VI. Class A Applications.

A. Class A Applications Generally.

The Commission's proposal to grant initial Class A status to qualified LPTV stations as a modification of a station's license should be adopted.[64] Class A applications should be limited, however, to converting the qualifying LPTV station's existing technical facilities to Class A status. They should not be permitted to propose any changes in the station's existing licensed LPTV facilities. In the event qualified LPTV stations hold a construction permit to modify their licensed facilities, they should not be entitled to file a Class A application for their modified facilities until

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[62] *See* Sections 5008(b)(1) and (2) of Pub. L. No. 106-113, 113 Stat. 1501 (1999).

[63] In the event a Class A station is sold, the assignee/transferee should be required to continue to provide the same annual certifications in order to maintain primary service status.

[64] *NPRM*, ¶42.

they have constructed those facilities and filed a covering license application. Any Class A application for a qualified LPTV station's modified facilities should be required to contain a satisfactory showing demonstrating that the modified Class A facility will not cause interference to any other authorized or earlier-filed application for an NTSC, DTV, or land mobile facility.

B. Class A Modification Applications Should Be Required to Protect Full-Service Stations to Maximum Facilities.

Class A applications which seek a change in the station's facilities should be required to protect the maximum facilities of full-service stations. The Commission should not, however, apply a reciprocal rule. The purpose of the CBPA is to protect qualifying LPTV stations as they existed at the time the new legislation was enacted, not to unnecessarily preclude or limit full-service TV stations (including DTV stations) from maximizing their facilities.[65] Therefore, the Commission should not require full-service NTSC or DTV stations to protect Class A stations to maximum facilities.

C. Class A Channel Displacement.

In the event it is necessary for a Class A station to change channels in order to eliminate an interference conflict, Class A stations should be permitted to apply for replacement channels on a first-come, first-serve basis, and not be subject to competing mutually exclusive applications. Moreover, Class A displacement applications should not be required to be filed during a filing window, and should not be considered mutually exclusive unless they are filed on the same day. Those mutually exclusive Class A applications which are filed on the same day should be subject to the auction procedures contained in Section 309(j) of the Act.

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[65] *See, e.g.*, 47 U.S.C. §336(f)(1)(D).

D. Class A Applications Should Be Subject to a Petition to Deny Filing Period.

Although the FCC has proposed to consider Class A applications as minor modification applications, the Commission should nevertheless subject Class A applications to a 30-day petition to deny filing period. Subjecting Class A applications to a meaningful period in which petitions to deny may be filed would help ensure that (i) Class A applicants have, in fact, satisfied the statutory eligibility criteria, including having operated their LPTV station in compliance with the Commission's rules, (ii) the proposed Class A station has neither caused nor will cause interference to a full-service station, and (iii) a grant of the Class A application would otherwise serve the public interest.

VII. Digital Operation by Class A Stations.

The FCC recognizes that Section 336(f)(4) of the Act does not require the Commission to issue an additional DTV license to a Class A station licensee or to a licensee of a TV translator station. Nevertheless, the Commission requested comments concerning whether it should authorize a paired DTV channel if a Class A or TV translator licensee identifies and applies for an available DTV channel.[66]

Section 336(f)(4) of the Act merely requires the FCC to accept Class A applications for digital licenses in lieu of analog licenses. Accordingly, the Commission should permit Class A stations to file applications to convert from NTSC to DTV operations on their existing channels, provided interference protection standards are met. Class A stations should not, however, be permitted to apply for a second channel for DTV operations. The award of a second channel to Class A stations for DTV operations would frustrate the implementation of DTV for full-service stations

[66] *NPRM*, ¶23.

by unnecessarily restricting their flexibility to resolve any unforeseen problems that may develop with their existing DTV allotments. The award of a second channel to Class A stations also would hinder the efforts of NTSC proponents to find a replacement channel for their pending proposals. As the Commission stated in the *Initial Notice*, available spectrum is scarce, and it may be difficult to find even one available channel for all Class A stations.[67]

The award of a second channel to Class A stations for digital operations also would be grossly inequitable considering that the Commission, in its DTV proceeding, previously denied requests to award a paired DTV allotment to full-service licensees, permittees, and applicants for new NTSC stations who had not received a construction permit as of April 3, 1997, the eligibility deadline for receiving an initial paired DTV license.[68] These full-service licensees, permittees, and pending applicants are now precluded from applying for a paired DTV channel.

In its Amended Petition, the CBA proposed that Class A stations should be permitted to file an application for any digital channel listed in the DTV Table of Allotments if the licensee or permittee allotted such channel failed to file a timely DTV construction permit application for that allotment.[69] In the event the CBA resubmits its previous proposal in this proceeding, its request should be denied. If the Commission elects to award additional channels for DTV purposes, these channels first should be awarded to full-service licensees, permittees, and pending NTSC applicants

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[67] *Initial Notice*, ¶67.

[68] *See, e.g., Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order* in MM Docket No. 87-268, 13 FCC Rcd 6860, 6865 (1998).

[69] *See* CBA's Amended Petition, Appendix A, proposed Section 73.622(i)(1)(ii).

whose primary service proposals were filed with the Commission long before any Class A applications.

To the extent feasible, the existing technical and service rules applicable to full-service DTV stations should apply to Class A stations operating in a digital format, including the minimum broadcast requirement. The Commission also should apply the same supplementary and ancillary fee regulations to Class A stations that are applied to full-service DTV stations. Because Congress granted primary service status to qualified LPTV stations based on their existing service to the public, Class A stations also should be required to use the same transmission standard adopted for full-power DTV stations to ensure that viewers are able to receive their signals in the same manner as full-power DTV stations.

VIII. Miscellaneous Technical Issues.

A. Qualified LPTV Stations Operating on Channels 52-69.

Section 336(f)(6)(A) of the Act prohibits the Commission from granting a Class A license to an LPTV station operating between 698 and 806 megahertz (channels 52-69). Thus, only those LPTV stations operating on a core channel (*i.e.*, channels 2-51) are eligible for a Class A license. For those LPTV stations operating outside the core, but which are able to find a replacement channel within the core, the FCC should provide protection to such stations only when (i) the station is assigned a channel within the core spectrum, and (ii) the Commission issues a Class A license for the in-core channel. The Commission is statutorily prohibited from providing interference protection to a qualified LPTV station before the station is assigned an in-core channel because it would be inconsistent with the CBPA's prohibition on awarding Class A status to stations outside the core.

The Commission should not give any special consideration or priority to displacement applications filed by qualified LPTV stations seeking to vacate a channel above Channel 59. These applications should be treated on an equal basis with respect to all other displacement applications. Indeed, those LPTV stations who file Class A displacement applications seeking to move from a channel above Channel 59 could have filed their displacement application long ago.[70]

B. Qualified LPTV Stations Operating on Channels 52-59.

As stated above, LPTV and TV translator stations operating on channels 60-69 are presumed to be displaced, and may file displacement applications at any time. Under the Commission's existing rules, however, stations operating on channels 52-59 may seek displacement relief only where there is an actual or potential interference conflict. As the Commission noted, these stations will be displaced when channels 52-59 are reclaimed at the end of the transition period, and potentially could be barred from becoming a Class A station if they cannot secure a replacement channel below Channel 52.[71] As a result, the Commission requested comments concerning whether the presumption of displacement afforded to channel 60-69 LPTV and TV translator stations should be extended to stations operating on channels 52-59, so that they too might have an immediate opportunity to seek a replacement channel. *Id.*

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[70] Stations operating on channels 60-69 are presumed to be displaced, and may seek replacement channels at any time. *See NPRM*, ¶53; *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, MM Docket No. 87-268, 13 FCC Rcd at 7465-66 (Commission amended its rules to permit all LPTV stations operating on channels 60-69 to file displacement applications requesting a channel below Channel 60, even where there is no predicted or actual interference conflict). LPTV stations operating on channels 52-59 are discussed below.

[71] *See NPRM*, ¶53.

The Commission should not extend the presumption of displacement to qualified LPTV stations operating on channels 52-59. Although Section 336(f)(6) of the Act requires the Commission to provide LPTV stations operating on channels 52-59 with "the opportunity to meet the qualification requirements for a class A license,"[72] the CBPA does not require the Commission to give channel 52-59 LPTV stations a priority over existing full-service stations (and pending applicants for new NTSC stations proposing to operate on channels 52-59) with respect to securing a replacement channel inside the core spectrum. Affording qualified LPTV stations operating on channels 52-59 a presumption of displacement would necessarily lead to greater competition for replacement channels not only among LPTV and TV translator stations, but full-service stations and pending NTSC proponents as well. Therefore, in the absence of a potential or actual interference conflict, the Commission should not permit qualified LPTV stations operating on channels 52-59 to seek a replacement channel until these channels have been reclaimed.

Requiring qualified LPTV stations operating on channels 52-59 to wait until the end of the transition period to seek a replacement channel inside the core spectrum not only will place them on an even playing field with full-service stations and pending NTSC applicants, but it will not necessarily preclude the LPTV stations from obtaining a Class A license. Indeed, in attempting to find a replacement channel, it should be much easier for LPTV stations to meet the Commission's strict, no *de minimis* interference standard than full-service stations because of their substantially smaller coverage areas.

Qualified LPTV stations operating on channels 52-59 should be required to file a certificate of eligibility no later than 30 days after the Commission adopts final regulations implementing the

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[72] 47 U.S.C. §336(f)(6).

CBPA. As the sole exception to the statutory requirement that Class A applications be filed within 30 days after the Commission adopts final regulations implementing the CBPA, qualified LPTV stations operating on channels 52-59 should be required to file their Class A applications specifying their replacement channel within 30 days after the end of the transition period. Class A displacement applications filed by LPTV stations operating on channels 52-59 should be given a priority over other non-Class A displacement applications, but should not receive interference protection until the Commission grants their Class A application for the in-core channel.

C. Power Levels of Class A Stations.

The power levels of Class A stations should be restricted to those of existing LPTV stations. As the Commission properly noted, increasing the power level of Class A stations would likely hinder the development of digital television and limit the number of Class A stations that may be authorized.[73] The primary purpose of the CBPA is to preserve the existing service areas of qualified LPTV stations, and to protect them from possible future displacement. The CBPA provides no indication that Congress intended to enable Class A stations to enhance their existing service areas and thereby (i) restrict the number of Class A stations that may be authorized, (ii) hinder the development of digital television, (iii) restrict the expansion of existing NTSC service, and (iv) restrict and/or altogether preclude the commencement of new NTSC service, including first local service.

D. Coverage Requirements.

The CBPA provides qualifying LPTV stations with "primary service" protection due to the past service they have provided to their respective local service areas. Accordingly, Class A stations

[73] *NPRM*, ¶54.

should be required to continue to provide a quality signal to their respective communities of license. The Commission should therefore require a Class A station's protected signal contour to cover the same or greater percentage of the LPTV station's community of license as it did on November 29, 1999, the date the CBPA was enacted.[74] This coverage requirement would help maintain a connection between a Class A station and its community of license, without requiring that the LPTV station serve any requisite portion of that community.

IX. Conclusion.

In implementing the CBPA, the Commission should interpret Section 336(f)(7)(A) of the Communications Act as requiring Class A applications to protect all full-service analog stations, including pending applications for such facilities, many of which have been pending at the Commission for a substantial period of time. Requiring Class A applications to protect pending applications for full-service stations would serve the public interest by promoting the Commission's fundamental objectives of fostering competition and creating additional opportunities for increased ownership diversity, which the new full-service stations would provide. Moreover, as demonstrated above, affording protection to pending full-service applications is critical to the development and further emergence of new national networks because it would enable them to enhance their distribution by having additional full-power broadcast stations with which to establish primary affiliations.

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[74] In the event a qualifying LPTV station's protected service area currently does not cover any portion of the station's community license, the Commission should not permit the Class A station to modify its facilities such that its transmitter site would be moved farther away from the center-city coordinates of the station's community of license.

Interpreting Section 336(f)(7)(A) of the Act in the manner described above also would enable the Commission to avoid raising the significant constitutional question of whether the dismissal of certain auction winners' applications for full-power television stations, which may conflict with subsequently-filed Class A applications, would constitute an unlawful "taking" in violation of the Fifth Amendment. In addition, requiring Class A applications to protect pending full-service applications would prevent the gross inequity that would result from the disparate treatment that applications for full-power stations and LPTV and TV translator applications received during the DTV "freeze."

Furthermore, requiring Class A applications to protect pending full-service applications would avoid the inherently inconsistent and unintended result of (i) authorizing Class A stations without regard to pending applications for full-power television stations, which have always been entitled to primary service status; and (ii) requiring Class A applications to protect only pending applications for LPTV and TV translator stations, including those which are not eligible for a Class A license. Because many of the pending applications for full-service stations propose to bring a first local service to the designated community, a decision by the Commission not to protect these pending applications also would result in an inconsistency between Sections 336(f)(7)(A) and 307(b) of the Act.

The Commission should keep in mind that the primary purpose of the CBPA is to protect the existing authorized facilities of qualified LPTV stations and prevent any further displacement of those stations. The new legislation was not designed to completely overturn the Commission's longstanding regulatory scheme by effectively elevating all LPTV and TV translator stations -- including those which are not even qualified for a Class A license -- to a higher status than full-

new rules to implement the CBPA, the Commission should interpret the statute in a manner to avoid raising significant constitutional questions, and adopt rules which are consistent with the Communications Act as a whole as well as the Commission's longstanding regulatory framework. Indeed, if the Commission elects to afford applications for LPTV and TV translator stations greater rights than those given to pending applicants for new full-service television stations, the Commission's Report and Order in this proceeding undoubtedly will be challenged on appeal, and is not likely to survive judicial scrutiny.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Barbara Lyle, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that on this 10th day of February, 2000, copies of the foregoing "Comments of The WB Television Network" were hand delivered to the following:

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